

LAMAR M. RICHARDSON, JR.

IBLA 79-246

Decided August 30, 1979

Appeal from decision of the Eastern States Office, Bureau of Land Management, dismissing the protest of offeror with second priority on lease ES 18423.

Affirmed and remanded.

1. Oil and Gas Leases: Generally – State Laws

The State laws applicable to Federal oil and gas leases are limited to those classes of laws authorized or recognized by sec. 32 of the Mineral Leasing Act, as amended, 30 U.S.C. § 189 (1976).

2. Applications and Entries: Inheritability – Oil and Gas Leases: Generally – Oil and Gas Leases: First Qualified Applicant

Where an applicant with first priority dies after filing an oil and gas lease application but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed in all cases an offer to lease in compliance with 43 CFR 3102.8. Such offer will be effective as of the date of the original lease offer filed by the deceased.

APPEARANCES: Lamar M. Richardson, Jr., Esq., pro se; Jason R. Warren, Esq., McDade and Lee, Washington, D.C., for respondent.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lamar M. Richardson, Jr., appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated January 17,

1979, dismissing his protest of the issuance of oil and gas lease ES 18423. The land in lease ES 18423 was posted to Simultaneous Oil and Gas List No. 78-1 as Parcel No. 245, and the lease was issued effective June 1, 1978, in the name of Horace H. Alvord III, whose drawing entry card offer (DEC) was drawn with first priority on February 8, 1978. Appellant's offer (DEC) was drawn with second priority. Each offeror had filed a simultaneous oil and gas drawing entry card properly signed and dated January 18, 1978, for Parcel No. 245.

Appellant filed a protest against the results of the drawing stating that, to his understanding, Mr. Alvord had died prior to the drawing and that appellant was therefore entitled to first priority in the oil and gas lease. <sup>1/</sup> The case record shows that BLM received notification on June 6, 1978, that Mr. Alvord had died on January 22, 1978, 4 days after filing his offer to lease. Evidence of the appointment of Marjorie J. Alvord as Testamentary Executrix of the Succession of Horace H. Alvord III, deceased, was filed with BLM August 3, 1978. By decision dated October 16, 1978, the lessee of record was changed by BLM to Marjorie J. Alvord, Executrix of the Estate of Horace H. Alvord III, in accordance with 43 CFR 3102.8.

Appellant asserts in his statement of reasons that 43 CFR 3102.8 is inapplicable to the present facts since it contemplates an offeror dying before a lease is "issued," but after an offer is "accepted." In such a case, appellant concedes, a heritable obligation would exist. Appellant submits, however, that Alvord's offer was received by BLM prior to his demise but not accepted until the drawing on February 8, 1978, well after his death. Accordingly, he argues that the first priority holder's offer was legally withdrawn by his death and the lease should properly be offered to the second priority holder.

Appellant's argument on this point is based upon Louisiana contractual law, specifically, Article 1810 of the Louisiana Civil Code (1870), <sup>2/</sup> which appellant urges the Board to consider inasmuch as both parties to this proceeding are residents of the State of Louisiana.

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<sup>1/</sup> See letters dated April 24, 1978, and May 17, 1978, to which BLM responded: "In accordance with the regulations 43 CFR 3102.8, the lease automatically passes onto the heirs or devisees of Mr. Alvord's estate."

<sup>2/</sup> Article 1810 provides:

"If the party making the offer die before it is accepted, or him to whom it is made die before he has given his assent, the representatives of neither party are bound, nor can they bind the survivor. But if the contract be accepted before the death of the party offering it, although he had not notice of it, the obligation is complete . . . ."

[1] The Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. §§ 181-287 (1976), is a comprehensive law providing for the disposal of certain Federally owned mineral deposits by lease. Section 32 of the Act, 30 U.S.C. § 189, reserves to the states or other local authority the right "to exercise any rights they may have, including the right to levy and collect taxes" upon property of a lessee. This section has been construed by the Solicitor of the Department of the Interior to limit the effect of laws enacted by a state or other local authority. "Only within the framework of their authority as it then existed may the laws enacted by the states apply." Applicability of State Community Property Laws to Federal Oil and Gas Leases with Respect to Acreage Limitations, 64 I.D. 44, 46 (1957).

As for appellant's contention that the decision is contrary to Louisiana law, we need only answer that under the Supremacy Clause of the United States Constitution, Federal law necessarily overrides conflicting State laws with respect to Federal public lands. U.S. Const., art. VI, cl. 2; Kleppe v. New Mexico, 426 U.S. 529, 543 (1976). "A different rule would place the public domain of the United States completely at the mercy of state legislation." Camfield v. United States, 167 U.S. 518, 526 (1897); see also Utah Power & Light Co. v. United States, 243 U.S. 389, 404-405 (1917). The Federal laws and regulations are the relevant body of law in this case.

Section 32 authorizes the Secretary of the Interior to prescribe "necessary and proper rules and regulations" and to do whatever else is necessary "to carry out and accomplish the purposes of the Act." Pursuant to that authorization, the Secretary has deemed it appropriate to prescribe the requirement in 43 CFR 3102.8 which provides in pertinent part: "If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees . . . ."

As the Board concluded in the Estate of Charles D. Ashley, 37 IBLA 367, 85 I.D. 403 (1978), an application for an oil and gas lease filed in the name of person deceased at the time of filing is properly rejected, as there was then no offeror qualified to hold the lease. The regulation, 43 CFR 3102.8, provides that if the offeror dies before a lease is issued, the lease will then be issued to the executor or administrator of the estate, provided there is filed in all cases an offer to lease in compliance with the regulatory requirements. Ashley, when read with the regulation stating who is qualified to receive a lease based upon a decedent's application, is not

ambiguous. The regulation thereby creates a narrow exception <sup>3/</sup> to the general rule that the death of the offeror prior to acceptance of the offer by the United States terminates it. See 1 Williston on Contracts, § 62 (3rd Ed. 1957).

[2] It was error for BLM to issue the lease in the name of Horace H. Alvord III after his death. It is pointed out that BLM should have investigated the protest by Richardson, containing information that Alvord had died. Then, upon receiving verification of the death of Alvord, BLM should have instituted the procedures required by 43 CFR 3102.8. <sup>4/</sup> As there is no time constraint

<sup>3/</sup> In Drake v. Simmons, 54 I.D. 150 (1933), the Secretary recognized such an exception by stating:

"The common law rule which declares a deed to one that is dead at the time of its execution to be a nullity is subject to exception, and assuming that the rule applies to oil and gas prospecting permits as well as to deeds, it is within the exception where the Department issues a permit to an applicant knowing him to be dead at the time and where the intention was by the formal use of his name as permittee to confer rights upon existing persons who are to succeed to his property."

<sup>4/</sup> § 3102.8 Heirs and devisees (estates).

"If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

"(a) Where probate of the estate has not been completed:

"(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

"(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under §§ 3102.1 and 3102.2-1 concerning citizenship and holdings.

"(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

"(b) Where the executor or administrator has been discharged or no probate proceedings are required:

"(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

"(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3102.1 and § 3102.2-1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee."

in the regulations for filing such substitute offer to lease (DEC), the Executrix of the estate should be called upon by BLM to submit such a new DEC, which will be recognized as having the same priority of consideration as was earned by the original offer (DEC) of Alvord at the drawing held February 8, 1978, for Parcel No. 245. The collateral information required by 43 CFR 3102.8 is presently in the case file, and need not accompany the substitute DEC.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the BLM State Office is affirmed, and the case remanded for compliance with this decision.

Douglas E. Henriques  
Administrative Judge

We concur.

Anne Poindexter Lewis  
Administrative Judge

Joseph W. Goss  
Administrative Judge

